

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT

BANKRUPTCY JUDGE

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July 1, 2004

Terry J. Sutton, Esq.
Counsel for Debtors
Post Office Box 1053
Watertown, South Dakota 57201

K&J Cycle, Creditor
Attention: Janet Lohrenz
428 West Park
Sheldon, Iowa 51201

Subject: *Scott Peterson v. Wayne Dullerud, et al.*
(*In re Scott A. Peterson*), Adversary No. 04-1011;
Chapter 7; Bankr. No. 02-10036

Dear Mr. Sutton and Ms. Lohrenz:

The matter before the Court is the complaint by Debtor Scott Peterson under 11 U.S.C. § 523(a)(3) to have declared discharged certain debts that he failed to list in his bankruptcy schedules and the answer thereto filed by creditor K&J Cycle. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, a judgment for Debtor will be entered and the subject debts will be declared discharged.

Summary of material facts. Scott A. Peterson ("Debtor") filed a Chapter 13 petition in bankruptcy on February 21, 2002. His Chapter 13 case was converted to a Chapter 7 case on January 28, 2003. He received a discharge of debts on April 29, 2003.

On April 20, 2004, Debtor filed a complaint against several creditors, including K&J Cycle. He stated that he owed each of these creditors money before he filed bankruptcy but that he forgot to list them on his schedules of liabilities. Regarding K&J Cycle's claim in particular, he said he owed K&J Cycle \$353.00. Relying on the special provisions set forth at § 523(a)(3) of the Bankruptcy Code (Title 11), Debtor asked the Court to declare these unscheduled debts discharged since none of his listed creditors had received any payment of their claims through the bankruptcy process.

K&J Cycle answered the complaint on April 28, 2004. It said that its claim arose from used parts it purchased but never

received from Debtor. The letter did not set forth any allegations of fraud.

Discussion. Section 523(a)(3)(A) of the Bankruptcy Code provides that most debts that a debtor fails to list on his schedules are nonetheless discharged in certain Chapter 7 cases. For this special exception to apply, the Chapter 7 case must have been one in which the debtor did not have any nonexempt assets to use to pay creditors' claims and the particular unscheduled debt must not have arisen from fraud, as that term is described under §§ 523(a)(2), (a)(4), or (a)(6). See *Hauge v. Skaar (In re Hauge)*, 232 B.R. 141, 148 (Bankr. D. Minn. 1999); *North River Insurance Co. v. Baskowitz (In re Baskowitz)*, 194 B.R. 839, 845-46 (Bankr. E.D. Mo. 1996). It is an unusual provision of the Bankruptcy Code that aims to treat unscheduled creditors the same as scheduled creditors. In essence, if the scheduled creditors' claims were discharged, then the unscheduled creditors' claims will also be discharged.

That is the situation here. Debtor failed to list K&J Cycle and several other creditors on his schedules. None of those unscheduled creditors identified their claims as ones that arose from the types of fraud set forth in §§ 523(a)(2), (a)(4), or (a)(6) of the Bankruptcy Code. Consequently, § 523(a)(3) provides that K&J Cycle's unscheduled claim and the claims of the other unscheduled creditors that are listed in Debtor's complaint are discharged.

The fact that K&J Cycle obtained a judgment against Debtor does not alter the result. Debtor's personal liability on the judgment is automatically discharged at the same time the debt is discharged. 11 U.S.C. § 524(a)(1). Consequently, K&J Cycle cannot enforce its judgment against Debtor personally. K&J Cycle, however, can still enforce its judgment lien if it attached to any of Debtor's nonexempt real property before he filed bankruptcy. That matter can be addressed by the appropriate state court.

An order will be entered discharging Debtor's personal liability under the several unscheduled claims and judgments listed in the complaint.

Sincerely,
/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: adversary file (docket original; serve parties in interest)